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U. S. DEPARTMENT OF AGRICULTURE,
INSECTICIDE AND FUNGICIDE BOARD.

J. K. HAYWOOD, *Chairman*; M. B. WAITE, A. L. QUAINANCE, J. A. EMERY.

SERVICE AND REGULATORY ANNOUNCEMENTS.¹

AUGUST AND SEPTEMBER, 1914.

OPINIONS OF GENERAL INTEREST REGARDING QUESTIONS ARISING UNDER THE INSECTICIDE ACT OF 1910.

Below are given extracts from various letters written by the board to individuals. In view of the fact that these opinions of the board may be of service to others, they are published for the benefit of the whole trade. In these letters only those parts have been published which are of importance. It should be understood that the board is not authorized by the provisions of the Insecticide Act of 1910 to criticize, approve, or suggest labels; so that any advice given in these letters is offered in an advisory capacity as representing the opinion of the board in the light of its present knowledge and in the light of the facts presented by the correspondent.

35. Application of the Insecticide Act of 1910 to substances commonly used for insecticidal or fungicidal purposes which are also employed for other purposes.

DEAR SIR: We have received your communication of * * * requesting information relative to the labeling of sulphur under the provisions of the Insecticide Act of 1910.

We are of the opinion that the provisions of the law apply to all substances commonly used as insecticides or fungicides, whether or not the labels give directions for insecticidal or fungicidal uses. Since sulphur is commonly used as an insecticide and fungicide, we are of the opinion that as such it is within the definition of an "insecticide" under section 6 of the Insecticide Act.

¹In conformity with Memorandum No. 57 of the Acting Secretary of Agriculture, dated December 26, 1913, prescribing a uniform plan for the publication of information bearing on regulatory matters of the Department of Agriculture, this publication is issued monthly, or less frequently, as occasion may warrant, by the Insecticide and Fungicide Board. Heretofore, announcement to the public of notices of court judgments and official decisions under the Insecticide Act of 1910, and opinions of the board relating to the application of the law to specific points, have been in the form of single printed sheets, or in the form of letters to individuals. Under the present plan they are all published in these Service and Regulatory Announcements of the Insecticide and Fungicide Board.

Free distribution will be limited to firms, establishments, and journals especially concerned. Others desiring copies may obtain them from the Superintendent of Documents, Government Printing Office, Washington, D. C., at 5 cents each or 50 cents a year.

In a recent case prosecuted under the Food and Drugs Act, involving an interstate shipment of eggs which were alleged to be adulterated in that they were decomposed, the contention was made that the eggs were intended for tanning purposes only. The court (Ray, *J.*) in its opinion in this case said:

There are tanneries in the vicinity of New York, and in fact the intention of the claimant in so transporting these eggs in question from Chicago to New York was to offer them for sale and dispose of them if possible at New York for use in tanning and not for use or consumption as food. This intention or purpose of the claimant had not been disclosed in any way or manner to any person or by any labeling or branding. The eggs in question had not been denatured or subjected to any chemical or any process. * * * The contention of the claimant is that while the eggs prior to decomposition were an article of food, when decomposed they have lost their character as an article of food if the owner does *not intend* to use, transport, or sell them as an article of food, but does intend to transport them and sell them for tanning purposes only and transports them for that purpose only. The difficulty with this contention is that these eggs, or eggs of this character, not denatured, come squarely within the definition of an *adulterated article of food*. The character of the thing does not depend on the intent or purpose of the owner in transporting or selling it, or the purpose the owner may have in selling it. * * * The construction of this Pure Food and Drugs Act contended for by this claimant would open the door to unrestrained transportation in interstate commerce of partially decomposed eggs, as the owner and dealer would, it might be honestly, transport them for sale in another State for use in tanning and actually, so far as he is concerned, sell them for that purpose or to some one claiming to purchase them for such purpose, when in fact the purchaser was intending to use them as an article of food or to dispose of them to some one to mix with flour, etc., and use as an ingredient in an article of food, such as cake, etc.

Respectfully,

J. K. HAYWOOD,

Chairman, Insecticide and Fungicide Board.

DEAR SIR: Your letter of * * * in further reference to the question as to whether sulphur is a product within the purview of the Insecticide Act of 1910 has been received.

The question raised by you has not as yet been decided in any case under the Insecticide Act, and the department can only be guided in its view of the matter by the apparent intent of the act.

Referring to the opinion of Judge Ray in the case of the Food and Drugs Act, *United States v. Thirteen Crates of Frozen Eggs*, you state you do not think the case is in point, and quote therefrom words purporting to show that the decision was predicated on the fact that the product in the case was not intended for food purposes was *undisclosed* on the label. Following the words from the opinion which are quoted by you, the contention as to intent appears to be disposed of by the court in the following words:

The difficulty with this contention is that these eggs, or eggs of this character, not denatured, come squarely within the definition of an adulterated article of food. The character of the thing does not depend on the intent or purpose of the owner in transporting it or selling it, or the purpose the owner may have in selling it.

Because a substance which is used as an insecticide or fungicide is used for other purposes also, it is none the less an insecticide or fungicide within the meaning of the Insecticide Act. Although such a substance may be manufactured and shipped for other than insecticidal or fungicidal purposes, it may be disposed of, by the consignee or subsequent purchaser, for insecticidal or fungicidal purposes. It is well settled that the purpose of such statute is to protect the consumer. Sulphur, for instance, among its various uses and purposes, is used and generally recognized in itself as an insecticide and fungicide and as an essential ingredient of many insecticides and fungicides.

If the character of such a product depends on the actual intention or purpose of the shipper in transporting or selling it, the effect would be to allow an obvious loophole for the palpable evasion of the requirements of the Insecticide Act as to all or a large number of substances commonly used for insecticidal or fungicidal purposes which are also employed for other purposes. This the department does not believe was the intent of the act.

If a product, by virtue of its inherent character, is within the purview of the act, it would appear its character as such can not be changed by a statement on the label to the contrary, such as a declaration to the effect that it is "not intended for insecticidal purposes." In other words, if a product is within the definition of the act, regardless of the actual intent or purpose of the shipper respecting its use, it would be none the less within the meaning of the act, notwithstanding a statement on the label attempting to show that it is not intended for insecticidal or fungicidal purposes.

Respectfully,

J. K. HAYWOOD,

Chairman, Insecticide and Fungicide Board.

36. Labeling a roach powder composed of borax, Paris green, plaster of Paris, and chamomile.

DEAR SIR: We have received your communication of * * * relative to labeling a roach powder under the provisions of the Insecticide Act of 1910. * * *.

In accordance with section 8 of the Insecticide Act of 1910, the face of the principal label of this product should bear a statement giving the names and percentage amounts of each and every inert ingredient and the fact that they are inert, or, in lieu of this, a statement giving the names and percentage amounts of each and every active ingredient and the total percentage of inert ingredients.

The face of the principal label should bear, in addition to the above, a statement of the total arsenic (expressed as per centum of metallic arsenic) and the arsenic in water-soluble forms (expressed as per centum of metallic arsenic). In a roach powder of borax, Paris green, chamomile, and plaster of Paris, we are of the opinion that the borax and Paris green are active against roaches and the plaster of Paris inert. Whether or not the chamomile is active against roaches we are unable to say, so can only suggest that this be placed in the hands of a competent entomologist for experimental determination.

Respectfully,

J. K. HAYWOOD,

Chairman, Insecticide and Fungicide Board.

37. Labeling a roach powder composed of commercial sodium fluorid, pyrethrum flower heads, and pyrethrum stems.

DEAR SIR: We have received your communication of * * * requesting information relative to the active and inert ingredients in a roach powder.

As we understand the preparation, it is composed of 50 per cent commercial sodium fluorid and 50 per cent a mixture of the powdered pyrethrum flower heads and stems. In such a mixture we are of the opinion that the sodium fluorid itself (NaF), the powdered flower heads, and the powdered stems are probably all active against roaches; however, the impurities of commercial sodium fluorid consisting of sodium sulphate, sodium chlorid, etc., are inert. We may add that we have made a considerable study of commercial samples of sodium fluorid and have found that none of them consists entirely of sodium fluorid, but that all contain sodium sulphate, sodium chlorid, etc., amounting in some cases to as much as 15 per cent.

In such a mixture as the above we suggest the following form of statement on the face of the principal label:

| Active ingredients: | Per cent. |
|--|-----------|
| Sodium fluorid ¹ ----- | |
| Pyrethrum powder containing stems----- | |
| Inert ingredients----- | |

You of course have the alternative of giving the names and percentage amounts of each and every inert ingredient and the fact that they are inert; however, we do not believe that this is a very feasible form of statement, since the sodium sulphate, sodium chlorid, etc., in different batches of commercial sodium fluorid vary to such a marked extent that it would be a difficult matter to adopt any one statement for the inert ingredients that would be applicable to all of your goods.

Respectfully,

J. K. HAYWOOD,
Chairman, Insecticide and Fungicide Board.

¹ By sodium fluorid is meant the amount of NaF present.

NOTICES OF JUDGMENT UNDER THE INSECTICIDE ACT OF 1910.

[Given pursuant to section 4 of the Insecticide Act of 1910.]

114. Misbranding of "Nyal's Roach Powder." U. S. v. Frederick Stearns & Co. Plea of nolo contendere. Fine, \$5 and costs. (I. & F. No. 183. Dom. No. 7172.)

On November 19, 1913, the United States attorney for the Eastern District of Louisiana, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Frederick Stearns & Co., New Orleans, La., a corporation, alleging the shipment, on July 15, 1912, from New Orleans, in the State of Louisiana, to Macon, in the State of Georgia, of a quantity of an article called "Nyal's Roach Powder," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in packages labeled as follows: "Nyal's Roach Powder * * * Effectually rids the premises of Cockroaches. New York and London Drug Co. (Incorporated) New York, U. S. A."

Misbranding of the article was alleged in the information in that it was an insecticide other than Paris green and lead arsenate, and that it consisted partially of corn meal, curcuma, and other inert substances which do not prevent, destroy, repel, or mitigate insects, and said labels did not have the names and percentage amounts of each and every one of said inert ingredients plainly and correctly stated thereon and did not state thereon the correct names and percentage amounts of each and every ingredient of said insecticide having and containing insecticidal properties and the total percentage of said inert ingredients present therein. Misbranding of the article was alleged further, in that it was an insecticide, and that the labels on the packages, and said packages containing said insecticide, by having and containing thereon the words "New York and London Drug Co. (Incorporated) New York, U. S. A.," thereby showed, indicated, and conveyed the meaning that said insecticide was manufactured in the State of New York, which was a false and misleading statement, in that said insecticide was in truth and in fact not manufactured in the State of New York, but was manufactured in the State of Michigan; and that said insecticide was falsely branded in that it was not manufactured in the State of New York but was manufactured in the State of Michigan.

On February 11, 1914, the defendant, Frederick Stearns & Co., entered a plea of nolo contendere, and the court imposed a fine of \$5 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

115. Misbranding of "Chloro-Naptholeum Disinfectant." U. S. v. Two Cases Chloro-Naptholeum Disinfectant. Verdict for the Government. Decree of condemnation. (I. & F. No. 189. Dom. No. 5203. S. No. 10.)

On October 3, 1913, the United States attorney for the District of Maryland, acting upon the report of the Secretary of Agriculture, filed a libel in the District Court of the United States for said district praying seizure and condemnation of two cases of an article called "Chloro-Naptholeum Disinfectant," found at Baltimore, Md. The article was labeled as follows: "Chloro-Naptholeum Disinfectant. Contains Inert Material, 10% water. Guaranteed by the West Disinfecting Co. under The Insecticide Act of 1910, Serial No. 156. West Disinfecting Co., Manufacturing Chemists, New York, U. S. A. * * *" It was alleged in the libel that the said two cases of "Chloro-Naptholeum Disinfect-

ant" had been transported from the State of New York into the State of Maryland and remained unsold in original unbroken packages in the possession of Harry Marcus, at Baltimore, Md.

Analysis of a specimen of the article in the United States Department of Agriculture showed that neither chlorine nor chlor-naphthol was an essential ingredient thereof. It was alleged that the article was misbranded, within the meaning of the Insecticide Act of 1910, because, being an insecticide or fungicide, (a) the package or label thereof bore a statement regarding the article or the ingredients or substances contained therein which was false and misleading, and (b) it was labeled and branded so as to deceive and mislead the purchaser, in this, that the label on each of the packages or cans containing the article bore the statement, design, and device, to wit, "Chloro-Naptholeum Disinfectant," which conveyed the meaning and impression, and was intended to convey the meaning and impression, that the article contained chlorine or chlor-naphthol as an essential ingredient thereof, whereas the article did not contain chlorine, and did not contain chlor-naphthol, as essential ingredients thereof.

On February 14, 1914, The West Disinfecting Co., New York, N. Y., filed a claim to the goods, and filed an answer to the libel. The cause having come on for hearing before the court and jury, on April 23, 1914, a sealed verdict was rendered in favor of the United States. On June 27, 1914, a decree of condemnation and forfeiture was filed against the article, and an order was entered directing the sale or destruction of the goods.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., *October 7, 1914.*

116. Adulteration and misbranding of "Aphine." U. S. v. The Aphine Manufacturing Co. Plea of non vult. Fine, \$25. (I. & F. No. 74. Dom. No. 2651.)

On November 2, 1912, the United States attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Aphine Manufacturing Co., Madison, N. J., a corporation, alleging the shipment and delivery for shipment, on June 13, 1911, from Madison, in the State of New Jersey, to Cincinnati, in the State of Ohio, of a quantity of an article called "Aphine," which was adulterated and misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled as follows: "Aphine The Insecticide that kills plant lice of every species. One gallon * * * Directions. To kill green, black and white fly, 1 part Aphine to 35 to 40 parts water. To kill thrips, red spider, slugs and ants, 1 part Aphine to 20 to 25 parts water. To kill mealy bug, white and brown scale, 1 part Aphine to 12 to 15 parts water. * * * Aphine is composed of essential oils, nicotine, and potassium hydrate, emulsified in 82 per cent water. * * * We guarantee to produce a uniform product at all times and that (if directions are strictly followed) Aphine will do all."

It was alleged in the information that the article was adulterated in that it was an insecticide, and, the labels on the cans of the article bearing the statement to the effect that the article contained 82 per cent water, whereas in truth and in fact the article contained 88 per cent water, the strength and purity of the article fell below the professed standard and quality under which it was sold. Misbranding of the article was alleged in that it was an insecticide, and that the labels on the cans of the article bore the statements: "Aphine the insecticide that kills plant lice of every species. * * * To kill * * * red spider * * * 1 part Aphine to 20 to 25 parts water. To kill mealy bug, * * * 1 part Aphine to 12 to 15 parts water;" whereas the article was in-

effective for killing red spider, mealy bugs, and plant lice; and in that the labels on the cans of the article bore the statement to the effect that the article contained 82 per cent water, whereas it contained 88 per cent water; by reason whereof the article was labeled and branded so as to deceive and mislead the purchaser.

On June 8, 1914, the defendant, the Aphine Manufacturing Co., entered a plea of non vult, and the court imposed a fine of \$25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

117. Misbranding of "Fungine." U. S. v. the Aphine Manufacturing Co. Plea of non vult. Sentence suspended. (I. & F. No. 154. Dom. No. 6958.)

On August 23, 1913, the United States attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Aphine Manufacturing Co., Madison, N. J., a corporation, alleging the shipment and delivery for shipment, on January 12, 1912, from Madison, in the State of New Jersey, to Cincinnati, in the State of Ohio, of a quantity of an article contained in cans labeled and branded "Fungine," which was misbranded within the meaning of the Insecticide Act of 1910.

It was alleged in the information that the article was misbranded in that it was a fungicide, and that the labels on the cans of the article bore the statement, "One Quarter Gallon," said statement conveying the impression that the package contained one-quarter of one gallon of the article, whereas, in fact and in truth, the package contained less than one-quarter of one gallon of the article; and in that the labels on the cans of the article bore the statement, "Fungine is composed of 12½ per cent. of sulphurated potassa and 87½ per cent. inert material," whereas, in fact and in truth, the article contained less than said percentage of sulphurated potassa; by reason whereof the article was labeled and branded so as to deceive and mislead the purchaser. Misbranding of the article was further alleged in that it was a fungicide and in package form, and the contents of the package were stated in terms of measure, but they were not correctly stated on the outside of the package, in this, that the labels on the packages bore the statement, "One Quarter Gallon," said statement conveying the impression that the package contained one-quarter of one gallon of the article, whereas, in fact and in truth, the package contained less than one-quarter of one gallon of the article.

On June 8, 1914, the defendant, the Aphine Manufacturing Co., entered a plea of non vult, and the court suspended sentence.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

118. Adulteration and misbranding of "Fungine." U. S. v. the Aphine Manufacturing Co. Plea of non vult. Sentence suspended. (I. & F. No. 157. Dom. No. 6767.)

On August 23, 1913, the United States attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Aphine Manufacturing Co., Madison, N. J., a corporation, alleging the shipment and delivery for shipment, on August 14, 1911, from Madison, in the State of New Jersey, to Washington, in the District of Columbia, of a quantity of an article called "Fungine," which was adulterated and misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled as follows: "Guaranteed by Aphine Manufacturing Co., under Insecticide Act of 1910. Serial No. 288. Fungine. * * * One Gallon. * * * Fungine

consists of sulphurated potassa, oils and potassium hydrate dissolved in about 75 per cent water. Manufactured by Aphine Manufacturing Co., Madison, New Jersey. Keep can well sealed to prevent evaporation."

It was alleged in the information that the article was adulterated in that it was a fungicide, and, the labels on the cans of the article bearing the statement to the effect that the article contained about 75 per cent water, whereas, in truth and in fact, the article contained considerably more than 75 per cent water, the strength and purity of the article fell below the professed standard and quality under which it was sold. Misbranding of the article was alleged in that it was a fungicide, and that the labels on the cans of the article bore the statement, "Fungine consists of sulphurated potassa, oils and potassium hydrate dissolved in about 75 per cent. water," whereas the article contained considerably more than 75 per cent water; by reason whereof the article was labeled and branded so as to deceive and mislead the purchaser. Misbranding of the article was alleged further in that it was a fungicide, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate fungi, and said substance, to wit, water, was not stated on the labels to be an inert ingredient, and that in lieu of such statement plainly and correctly on the labels of the name and percentage amount of said inert ingredient, the labels did not bear a statement of the correct names and percentage amounts of each and every ingredient of the fungicide having fungicidal properties, and the total percentage of said inert ingredient thereof.

On June 8, 1914, the defendant, the Aphine Manufacturing Co., entered a plea of non vult, and the court suspended sentence.

*CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

119. Misbranding of "Grasselli Lime Sulphur Solution." U. S. v. Grasselli Chemical Co. Plea of non vult. Fine, \$50. (I. & F. No. 206. Dom. No. 7298.)

On February 20, 1914, the United States attorney for the District of New Jersey, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Grasselli Chemical Co., Grasselli, N. J., a corporation, alleging the shipment and delivery for shipment, on March 15, 1912, from Grasselli, in the State of New Jersey, to Albany, in the State of New York, of a quantity of an article called "Grasselli Lime Sulphur Solution," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled and branded in part as follows: "One quart Grasselli Lime Sulphur Solution. Directions. Use one gallon to 9 to 11 gallons of water for blister mite, San Jose scale and all scale insects. Apply late in the fall or early in the spring when trees are not in foliage. Never use at this strength when trees are in foliage. This article is also a valuable fungicide. * * * The Grasselli Chemical Company, established 1839. General Offices, Cleveland, Ohio. * * * Guaranteed by The Grasselli Chemical Co. under the Insecticide Act of 1910. Serial number 17."

It was alleged in the information that the article was misbranded in that it was an insecticide and fungicide, and that the packages or labels thereof bore a statement regarding the article which was false and misleading, and that the article was labeled or branded so as to deceive or mislead the purchaser, in this, that the labels on the packages bore the statement, "One quart Grasselli Lime Sulphur Solution," whereas, in truth and in fact, the packages did not contain one quart of the article but contained less than one quart thereof. Misbranding of the article was alleged further in that it was an insecticide and fungicide, and that it was in package form and the contents of the packages

were stated in terms of measure but they were not correctly stated on the outside of the packages, in this, that the labels on the packages bore the words, "One quart Grasselli Lime Sulphur Solution," whereas, in truth and in fact, the packages did not contain one quart of the article but contained less than one quart thereof.

On May 6, 1914, the defendant, Grasselli Chemical Co., entered a plea of non vult, and the court imposed a fine of \$50.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

120. Misbranding of "Cresogent." U. S. v. Blumauer-Frank Drug Co. Plea of guilty. Fine, \$100. (I. & F. No. 181. Dom. No. 7002.)

On June 4, 1913, the United States attorney for the District of Oregon, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against Blumauer-Frank Drug Co., Portland, Oreg., a corporation, alleging the shipment, on April 24, 1912, from Portland, in the State of Oregon, to Boise, in the State of Idaho, of a quantity of an article called "Cresogent," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in a can labeled and branded in part as follows: "B F D Company. Cresogent (Cresol Detergent) Non-Poisonous Disinfectant and Deodorant Especially valuable for use in the Household, School, Stable, Hospital, Public Buildings. For Household Use. * * * For Stable Use. * * * To Remove Flies, Destroy Ticks or Lice—Use three tablespoonfuls of Cresogent in a gallon of water and wash animals for two or three days. * * * For Ticks or Scabs on Sheep—Use one pint of Cresogent in 12 gallons of water, allow to remain in three minutes. * * * One Gallon of Cresogent makes 100 Gallons of Sheep Dip. Put up only by Blumauer-Frank Drug Co. Portland, Oregon."

It was alleged in the information that the article was misbranded in that it was an insecticide, and that it was labeled and branded so as to deceive and mislead the purchaser in this, that the label on the package of the article bore the statement, "Non-Poisonous," whereas, in truth and in fact, said article was not non-poisonous. Misbranding of the article was alleged further in that it was an insecticide and that it was labeled and branded so as to deceive and mislead the purchaser in this, that the label on the package of the article bore the statement, "Destroys Ticks," whereas, in truth and in fact, the article did not contain any substance that destroys certain species of ticks. Misbranding of the article was alleged further in that it was an insecticide, and that it consisted partially of an inert substance, to wit, water, which does not prevent, destroy, repel, or mitigate insects, and the name and percentage amount of said inert ingredient were not stated on the label on the package of the insecticide, and no label on the package bore a statement of the name and percentage amount of each and every ingredient of the insecticide having insecticidal properties, and a statement of the total percentage of the inert ingredient.

On June 30, 1914, the defendant, Blumauer-Frank Drug Co., entered a plea of guilty, and the court imposed a fine of \$100.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

121. Misbranding of "Mt. Hood Whale Oil Soap." U. S. v. Mt. Hood Soap Co. Plea of guilty. Fine, \$10. (I. & F. No. 270. Dom. No. 7771.)

On July 31, 1914, the United States attorney for the District of Oregon, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Mt. Hood Soap Co.,

Portland, Oreg., a corporation, alleging the shipment and delivery for shipment, on March 24, 1913, from Portland, in the State of Oregon, to Spokane, in the State of Washington, of a quantity of an article called "Mt. Hood Whale Oil Soap," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in a case labeled and branded as follows: "Mt. Hood Whale Oil Soap. Mt. Hood Soap Co., 4th & Glisan Sts., Portland, Oregon."

It was alleged in the information that the article was misbranded in that it was an insecticide other than Paris greens and lead arsenates, and that it consisted partially of an inert substance, to wit, water, which substance does not prevent, destroy, repel, or mitigate insects, and the name and the percentage amount of said inert ingredient were not stated plainly and correctly, or at all, on any label on the insecticide or package thereof, nor, in lieu of the name and the percentage amount of said inert ingredient, were the names and the percentage amounts of each and every ingredient of the insecticide having insecticidal properties and the total percentage of said inert ingredient stated plainly and correctly, or at all, on any label on the insecticide or package thereof.

On August 20, 1914, the defendant, Mt. Hood Soap Co., entered a plea of guilty, and the court imposed a fine of \$10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

122. Misbranding of "Standard Lime and Sulphur Solution." U.S. v. Portland Seed Co. Plea of guilty. Fine, \$10. (I. & F. No. 257. Dom. No. 7760.)

On July 31, 1914, the United States attorney for the District of Oregon, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against the Portland Seed Co., Portland, Oreg., a corporation, alleging the shipment and delivery for shipment, on February 21, 1913, from Portland, in the State of Oregon, to Seattle, in the State of Washington, of a quantity of an article called "Standard Lime and Sulphur Solution," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in cans labeled and branded as follows: "Standard Lime and Sulphur Solution For San Jose Scale. Oyster Shell Scale, Leaf Curl, Peach Moth, Twig Borer, Peach Mildew, Red Spider. Directions for using. * * * Portland Seed Company Diamond Quality Trade Mark Portland Seed Co. Portland, Oregon."

It was alleged in the information that the article was misbranded in that it was insecticide other than Paris greens and lead arsenates, and that it consisted partially of inert substances, to wit, water and calcium sulphate, which substances do not prevent, destroy, repel, or mitigate insects or fungi, and the names and the percentage amounts of each one of said inert ingredients were not stated plainly and correctly, or at all, on each or any of the labels or packages of the insecticide, nor, in lieu of the names and the percentage amounts of said inert ingredients, were the names and the percentage amounts of each and every ingredient of the insecticide having insecticidal or fungicidal properties, and the total percentage of said inert ingredients present in the insecticide, stated plainly and correctly, or at all, on each or any of the labels or packages of the insecticide.

On August 26, 1914, the defendant, Portland Seed Co., entered a plea of guilty, and the court imposed a fine of \$10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

123. Alleged misbranding of "Lion Brand Strictly Pure Paris Green." U. S. v. James A. Blanchard Co. Demurrer to information sustained. (I. & F. No. 12. Dom. No. 519.)

On December 11, 1913, the United States attorney for the Western District of Michigan, acting upon the report of the Secretary of Agriculture, filed information in the District Court of the United States for said district against James A. Blanchard Co., New York, N. Y., a corporation, alleging the shipment and delivery for shipment, on April 1, 1911, from St. Joseph, in the State of Michigan, to Omaha, in the State of Nebraska, of a quantity of an article called "Lion Brand Strictly Pure Paris Green," which was misbranded within the meaning of the Insecticide Act of 1910. The article was contained in packages labeled as follows: "Warranted Strictly Pure Paris Green (Poison) The James A. Blanchard Co. New York. Lion Brand Strictly Pure Paris Green. One Pound Net."

Misbranding of the article was alleged in the information in that it was Paris green, and that the contents of the package were not plainly and correctly stated in terms of weight on the outside of the packages in this, that the label on the outside of the packages bore the statement, "One Pound Net," whereas, in truth and in fact, the packages contained less than one pound net in weight in Paris green.

The defendant interposed a demurrer to the information, alleging that the information was insufficient in law for the reasons, among others, that the affidavits upon which the information was based were insufficient in that they did not set forth sufficient facts, knowledge, and information to constitute the proper basis for such information; and that it appeared from one of the affidavits that the product therein described was received at Omaha, Nebr., in the ordinary course of interstate transportation from James A. Blanchard Co., New York, N. Y., although it was alleged in the information that said respondent shipped and delivered for shipment the product in interstate commerce from St. Joseph, in the State of Michigan, to Omaha, in the State of Nebraska.

The cause having come on for hearing on demurrer, the court, on July 10, 1914, rendered an opinion sustaining the demurrer.

Following is the opinion of the court (Sessions, J.):

The information by which this prosecution was commenced is insufficient. It was filed by the District Attorney and is based entirely upon three affidavits thereto attached. While the information itself charges an unlawful shipment of misbranded Paris green in interstate commerce "from the City of St. Joseph, in the State of Michigan, to Omaha, in the State of Nebraska," in violation of the Insecticide Act of 1910 (36 Stat. 331), the affidavits contain no such allegations of fact and no statement of any kind from which it can even be inferred that the shipment of Paris green either originated in or passed through the Western District of Michigan. An essential element or ingredient of the offense as well as a jurisdictional fact has thus been omitted and respondent's constitutional rights are invaded and violated.

United States v. Tureand, 20 Fed. Rep., 621; United States v. Strickland, 25 Fed. Rep., 469; United States v. Polite, 35 Fed. Rep., 58; Johnston v. United States, 87 Fed. Rep., 187; United States v. Baumert, 179 Fed. Rep., 735. See also Erwin v. United States, 37 Fed. Rep., 470, 489; In re Dane, 68 Fed. Rep., 886, 894, 895; 22 Cyc., 267-272, and cases there cited.

The other grounds of demurrer need not be considered. The demurrer is sustained.

CARL VROOMAN, *Acting Secretary of Agriculture.*

WASHINGTON, D. C., October 7, 1914.

